MICHIGAN SUPREME COURT

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JUDICIAL MISCONDUCT CHARGE TO BE HEARD BY SUPREME COURT; JUDGE DISPUTES HIGH COURT'S POWER TO ORDER PSYCHOLOGICAL COUNSELING

LANSING, MI, March 28, 2006 – A judge's anger – and whether he can be required to undergo psychotherapy to help him manage it – is at issue in a case that the Michigan Supreme Court will hear next week.

In *In re Bradfield*, the Judicial Tenure Commission (JTC), which prosecutes judicial misconduct charges, alleges that Judge David Martin Bradfield of the 36th District Court in Detroit engaged in two angry confrontations, one with a Detroit deputy mayor and the other with a parking structure attendant. The judge, who admits that his actions violated judicial ethics rules, argues that the JTC's recommended sanction – a one-year suspension from the bench without pay – is too harsh. He also contends that the Supreme Court has no power to order him to undergo psychological counseling for his anger, as the JTC recommends.

The Court will also hear *Carson Fischer, PLC v Michigan National Bank*, in which the plaintiff, a Bloomfield Hills law firm, sued its bank after the firm's office manager embezzled about $5 million from the firm over 10 years. The office manager was entrusted with firm checks made payable to the bank; instead of depositing the checks to the firm's account, he added his personal bank loan numbers to the checks, which were then credited to his accounts. The bank contends that, under a state statute, the bank is not liable because the law firm did not notify the bank of any unauthorized signature on or alteration of the embezzled checks. The Michigan Court of Appeals has rejected that argument, finding that there was no unauthorized signature or alteration of the checks.

The remaining four cases involve paternity, worker's compensation, no-fault insurance, and court procedure.

Court will be held on **April 4 only**, starting at **9:30 a.m.** The Court will hear oral arguments in its courtroom on the sixth floor of the Michigan Hall of Justice in Lansing.

(*Please note: The summaries that follow are brief accounts of complicated cases and may not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. Briefs in the cases are available on the Supreme Court's website at* http://courts.michigan.gov/supremecourt/Clerk/msc_orals.htm. *For further details about the cases, please contact the attorneys.*)

Tuesday, April 4
Morning Session

CARSON FISCHER, PLC v MICHIGAN NATIONAL BANK, et al. (case no. 128689)
Attorney for plaintiff Carson Fischer, PLC: Timothy O. McMahon/(248) 554-6300
Attorney for defendants Michigan National Bank and Michigan National Corporation: Craig L. John/(248) 203-0700
Trial court: Oakland County Circuit Court
At issue: MCL 440.4406 requires a bank customer to "exercise reasonable promptness in examining the statement . . . to determine whether any payment was not authorized because of an alteration of an item or because a purported signature . . . was not authorized." In this case, the plaintiff's office manager obtained checks payable to defendant Michigan National Bank and inserted the number of his own loan accounts on the face of the checks. Was the insertion of personal loan numbers on the face of checks an "alteration" of the checks? If the checks did not contain an "alteration," were they payable under MCL 440.4401(1), which states that an item is payable if it is "authorized by the customer and is in accordance with any agreement between the customer and the bank"?
Background: Over a 10-year span, Chip Rasor, the office manager of Bloomfield Hills law firm Carson Fischer, PLC, embezzled approximately $5 million from the firm. This case concerns the proper allocation of that loss between Carson Fischer and its bank, defendant Michigan National Bank. As office manager, Rasor was entrusted with checks that were made payable to the bank; the checks were intended to pay Carson Fischer's withholding tax liability. Rasor added his personal bank loan numbers to the checks before he presented them to the bank, which then credited Rasor's personal loan accounts instead of Carson Fischer's account. After the fraud came to light, Carson Fischer sued Rasor and obtained a $20 million judgment against him; he was also convicted of bank fraud and sent to prison. Carson Fischer also sued Michigan National, demanding that the bank credit Carson Fischer's account in the amount of the embezzled funds. The bank argued that MCL 440.4406 and the parties' account agreement required Carson Fischer to give the bank notice of any unauthorized signature on, or alteration of, its checks. At most, the bank argued, it was liable only for those losses suffered by Carson Fischer after it received notice of Rasor's fraud. The trial court agreed and granted the bank's motion for partial summary disposition. The trial court limited Michigan National's liability to the funds that were embezzled on or after September 1, 2000. Carson Fischer appealed. The Court of Appeals reversed in an unpublished per curiam opinion, reasoning that there was no unauthorized signature or alteration in the case, and that the limitation on recovery under MCL 440.4406 did not apply to Carson Fischer's claim against Michigan National. Michigan National appeals.

IN RE BRADFIELD (case no. 128843)
Attorney for petitioner Judicial Tenure Commission: Paul J. Fischer/(313) 875-5110
Attorney for respondent Hon. David Martin Bradfield: Brian Einhorn/(248) 355-4141
Tribunal: Judicial Tenure Commission
At issue: A judge admits that his conduct, which included an angry confrontation with a driver parked near the judges' entrance to the courthouse, violated two of the ethical rules governing judges' behavior. This is not the judge's first violation. Should the judge be suspended for one year without pay, as recommended by the Judicial Tenure Commission (JTC)? Can the judge be

compelled to undergo psychological counseling?
Background: Judge David Martin Bradfield is a judge of the 36th District Court in Detroit. The JTC brought a formal complaint against the judge, alleging that judge engaged in two angry, near-violent outbursts. According to the JTC complaint, on April 6, 2005, Bradfield confronted a man whom he believed was improperly parked near the judges' entrance to the courthouse. During the confrontation, Bradfield allegedly stated that he was a judge, and then used profanity and assaulted the man. He later learned that the man was Anthony Adams, the Deputy Mayor of Detroit, and that Adams was waiting outside the judges' entrance in order to meet his wife, 36th District Court Judge Deborah Ross Adams. The JTC alleges that Bradfield's angry tirade against Adams continued during a meeting which included the others involved in the dispute and the chief judge of the 36th District Court. The JTC also alleges that Bradfield was involved in another parking dispute in October 2002. The judge allegedly sought to park in a reserved section of the Gem Theatre's parking lot and responded angrily when told that the reserved spaces would not be available to the 36th District Court judges until the following week. At a public hearing on the JTC complaint, the judge admitted that he had violated Canon 1 of the Michigan Code of Judicial Conduct by failing to "observe the high standards of conduct necessary to the preservation of the integrity and independence of the judiciary." He also admitted that he had violated Canon 2A, which requires judges to avoid "all impropriety and appearance of impropriety" so that public confidence in the judiciary will not be "eroded by irresponsible or improper conduct by judges." The JTC concluded that the judge's actions also violated Canon 2B, because he failed to respect and observe the law, and that he had also violated two Michigan Court Rules governing judges' behavior. Noting that Bradfield had been disciplined on two previous occasions, the JTC recommended that the Supreme Court suspend the judge for one year without pay and require him to undergo intensive psychological treatment to control his anger. The judge appeals. He argues that the recommended one-year suspension is overly harsh, and he proposes that he be suspended without pay for 90 days. He also argues that the Supreme Court does not have the authority to order him to attend psychotherapy.

BARNES v JEUDEVINE (case no. 129606)
Attorney for plaintiff Michael J. Barnes, Jr.: Jeffrey M. Gagie/(269) 655-1118
Attorney for defendant Kim Kristine Jeudevine: George T. Perrett/(269) 349-7686
Trial court: Kalamazoo County Circuit Court
At issue: The Paternity Act gives circuit courts jurisdiction over proceedings about support payments for children born out of wedlock. The act defines a child born out of wedlock as a child born to a mother who was not married from the date of conception to birth, or a "child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." In this case, the child was conceived before the defendant's divorce from her husband. The husband did not know that the defendant was pregnant, and the default divorce judgment states that it "appear[s] that no children were born of this marriage and none are expected." The plaintiff, who allegedly had a sexual relationship with the defendant while she was still married, filed a paternity action, claiming to be the child's biological father. Does the plaintiff lack standing to proceed under the Paternity Act, MCL 722.711 *et seq*., where the child's mother was married at the time of the child's conception? Does the default divorce judgment amount to a determination by a court that the child is "not the issue of [the defendant's] marriage"?
Background: Michael Barnes alleges that he and Kim Kristine Jeudevine had a sexual

relationship while Jeudevine was still married to her ex-husband. A child was conceived before Jeudevine was divorced from her husband. Jeudevine did not tell her soon-to-be ex-husband that she was pregnant, and the default divorce judgment states that it "further appear[s] that no children were born of this marriage and none are expected." The child was born four months after the divorce. Barnes and Jeudevine completed an affidavit of parentage, and Barnes is listed as the child's father on the birth certificate. Barnes alleges that he then lived with Jeudevine and the child for more than four years until he and Jeudevine separated. Barnes then filed a paternity action, seeking a legal determination that he is the child's father. The trial court granted summary disposition and dismissed Barnes' lawsuit, finding that the default divorce judgment did not amount to a prior judicial determination of paternity under *Girard v Wagenmaker*, 437 Mich 231 (1991), and that, as a result, Barnes lacked standing to bring a paternity action. The Court of Appeals disagreed and reversed in an unpublished opinion. Jeudevine appeals.

Afternoon Session

BIERLEIN v SCHNEIDER (case no. 128913)
Attorney for plaintiffs Norma R. Bierlein, Next Friend of Samantha C. Bierlein, a Minor, and Kirt Bierlein, Conservator for Samantha C. Bierlein, a minor: David B. Meyer/(989) 792-9641
Attorney for defendants Mark Schneider and Mary Schneider: Raymond W. Morganti/(248) 357-1400
Trial court: Saginaw County Circuit Court
At issue: A personal injury action involving a minor plaintiff was settled, but not in compliance with MCR 2.420(3) and (4)(a): no conservator was appointed and no bond was approved by or filed with the probate court. More than one year passed before it was discovered that the minor child's attorney embezzled the settlement funds; the Court of Appeals held that the case could not be reopened. Under these circumstances, did the circuit court have subject matter jurisdiction to approve the settlement and enter an order of dismissal? Should the settlement be reopened?
Background: Samantha Bierlein, a child, suffered brain damage in an accident involving an automobile owned and operated by Mark and Mary Schneider. Norma Bierlein sued the Schneiders on her daughter's behalf. The parties reached a settlement, which the trial court approved in 1997. The Schneiders' insurance company paid the settlement and the lawsuit was then dismissed. But the trial court did not insist upon compliance with the requirements of MCR 2.420(B)(3) and (4)(a): no conservator was appointed to protect the child's interests and no bond was approved by or filed with the probate court. In 2001, Bierlein informed the trial court that, although she had made repeated inquiries to Patrick Collison, the attorney who settled the lawsuit, she was unable to locate the settlement proceeds that Collison had supposedly invested on her daughter's behalf. Her inquiry prompted a series of hearings, and a conservator was appointed for her daughter. Soon after, it was discovered that Collison had embezzled the money. At this point, the trial court granted relief from the order of dismissal and reopened the settlement proceedings. The Schneiders appealed to the Court of Appeals, which ruled in an unpublished opinion that the trial court erred in reopening the settlement. The appeals court remanded the case to the trial court for further proceedings. On remand, the trial court reinstated the original order of dismissal. Bierlein and the appointed conservator appealed this ruling to the Court of Appeals, which denied leave to appeal for lack of merit. They now appeal to the Supreme Court.

PAIGE v CITY OF STERLING HEIGHTS, et al. (case no. 127912)
Attorney for plaintiff Randall G. Paige (Deceased): Steven J. Pollok/(517) 332-3555
Attorney for defendants City of Sterling Heights, Self-Insured, and Accident Fund Company: Ronald A. Weglarz/(313) 983-4920
Attorney for amicus curiae Michigan Self-Insurers' Association: Martin L. Critchell/(313) 961-8690
Tribunal: Worker's Compensation Appellate Commission
At issue: In this case, the magistrate determined that a work-related injury was the proximate cause of the employee's death, applying the rule set forth in *Hagerman v Gencorp Automotive*, 457 Mich 720 (1998). The magistrate therefore awarded benefits to the employee's son, conclusively presuming that the son, who was eight years old on the date of his father's injury, was a dependent. Was *Hagerman* overruled by *Robinson v City of Detroit*, 462 Mich 439 (2000), in which the Supreme Court considered the governmental tort liability act and held that the phrase "the proximate cause" means "the one most immediate, efficient, and direct cause preceding an injury"? Was it proper for the magistrate to conclusively presume that the employee's son was a dependent, when he was more than 16 years old on the date of his father's death?
Background: Randall G. Paige, a firefighter employed by the city of Sterling Heights, suffered a work-related heart attack in 1991 and did not work after that time. Paige suffered a second heart attack in August 2000 and, on January 4, 2001, passed away in his sleep as a result of a third heart attack or a fatal arrhythmia. Paige's son Adam, born in 1983, filed a claim against the city for dependency benefits pursuant to MCL 418.375(2). He claimed that his father's work-related injury was the proximate cause of death and that he, as his father's dependent, was entitled to benefits. The worker's compensation magistrate found that the 1991 work-related injury was the proximate cause of death, relying on the Supreme Court's decision in *Hagerman v Gencorp Automotive,* 457 Mich 720 (1998). The magistrate also found that Adam Paige was a conclusively presumed dependent. The city appealed to the Worker's Compensation Appellate Commission (WCAC), arguing that *Hagerman* had been overruled by *Robinson v City of Detroit*, 462 Mich 439 (2000), and that the medical testimony did not establish that Randall Paige's work-related injury was the proximate cause of his death. The city also argued that the magistrate erred in presuming that Adam Paige was a dependent and that the magistrate should have reconsidered the question anew as of the time of the father's death. The WCAC affirmed the magistrate's rulings. The Court of Appeals denied the city's application for leave to appeal. The city appeals.

CAMERON v AUTO CLUB INSURANCE ASSOCIATION (case no. 127018)
Attorney for plaintiffs Diane Cameron and James Cameron, Co-Guardians of the Estate of Daniel Cameron: Robert E. Logeman/(734) 994-0200
Attorney for defendant Auto Club Insurance Association: James G. Gross/(313) 963-8200
Attorneys for amicus curiae Coalition Protecting Auto No-Fault: Louis A. Smith/(231) 946-0700, Steven A. Hicks/(517) 394-7500
Attorney for amicus curiae Insurance Institute of Michigan: John A. Yeager/(517) 351-6200
Attorney for amicus curiae Michigan Catastrophic Claims Association: Jill M. Wheaton/(734) 214-7629
Attorney for amicus curiae Michigan Department of Community Health: H. Daniel Beaton, Jr./(517) 373-7700

Attorney for amicus curiae Michigan Trial Lawyers Association: Mark Granzotto/(248) 546-4649
Trial court: Washtenaw County Circuit Court
At issue: In this 2002 no-fault lawsuit, can the plaintiffs recover attendant care benefits that relate to care that their injured son received from 1996 through 1999? Or does MCL 500.3145(1), often referred to as the one-year-back rule, prevent the plaintiffs from recovering any attendant care benefits that were incurred more than one year before the date that their lawsuit was filed?
Background: Daniel Cameron was injured in an automobile accident on August 22, 1996. In this lawsuit, filed on May 9, 2002, his parents, Diane and James Cameron, sought to recover payment of attendant care benefits from the date of the accident through August 1999, when Daniel was admitted into in-patient rehabilitation. Their no-fault insurance company, Auto Club Insurance Association (ACIA), refused to pay the requested benefits. ACIA argued that the Camerons had not previously requested payment for those services. ACIA further contended that the Camerons' request for payment for three years' worth of services (from 1996 through 1999) was barred by MCL 500.3145(1), which, ACIA argued, only allows the Camerons to recover for services that were rendered in the year before their 2002 lawsuit was filed. The Camerons argued that the one-year-back rule was tolled in this case by MCL 600.5851(1) of the Revised Judicature Act, which, in certain circumstances, grants a person who is under 18 years old when a claim accrues additional time to bring "an action under this act." The Camerons maintained that this tolling statute applied and that, as a result, they were not bound by the one-year-back rule. The trial court denied ACIA's motion for summary disposition and instead entered judgment in the Camerons' favor, awarding them $182,500. In a published opinion, the Court of Appeals reversed. It held that, for causes of action arising after October 1, 1993 (the effective date of the current version of MCL 600.5851(1)), the one-year-back rule applies because no-fault lawsuits are not "an action under this act" within the meaning of the tolling statute. The Camerons appealed. The Supreme Court heard oral argument on October 18, 2005, and directed the parties to file supplemental briefs "on the issue whether the provisions of MCL 600.5851(1) apply to the 'one year back rule' of MCL 500.3145(1)" and to appear for additional argument in April 2006.

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